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Supreme Court-In Banco.

JULY TERM, 1871.

ALLEN, C. J., HARTWELL, J.

The King vs. Bila Kamakana.

ivers all the Statute incredients of the offence

an officer, who was in charge of the prisoner, sub-

sequently testifying that he told him "if he was

gullty he had better admit it, if not, to say so; but

that if he would come in and confess, the Judge

would go free of the charge, and that shortly after

this, the defendant went in and acknowledged his

guilt;" Held; That it was not error that the

Court, unusked, did not rule out the confession, the

Magistrate having cautioned the prisoner to be care-

arainst him; but refusal to admit evidence of in

ducements by an officer present in the Court-room,

Exceptions from the Third Circuit Court

holden at Hilo, at the last May Term, at which

the defendant was convicted on an indictment

for perjury, charging him with falsely testifying

before the Police Justice of Hilo, in a trial of

one Koi and one Kapuahi for selling intoxicat-

ing liquors, that he obtained liquor of the said

evidence at the said trial, he saw its discrepancy.

and "informed the parties that he would adjourn

to give any of the witnesses a chance to retract

if they felt inclined to do so; that shortly there-

after one of the witnesses at said trial came in

this defendant said that what he had testified in

court was false; that this defendant, with the

remaining two witnesses, was immediately ar-

rested for perjury, and after hearing the charge

and being cautioned by the Court to be careful

what they said, for their statements might be

read in the Court above, they then said, we are

indeed guilty." The remaining evidence does

not tend to sustain the verdict unless taken in

connection with the confession. On this point,

the evidence of the defendant's witness Kainon

was, that just before the confession, he heard the

Luna Makai, Keswehano, conversing with the

defendant, but did not know what was said ; that

Kuhiko was a luna makal living near the defend-

ant. Here the defendant's counsel proposed to

ask the witness, " if Kahiko had any conversation

with defendant in the court-room at Hilo, on the

day in which he and Keoni and others were

prosecuted for perjury, immediately before de-

fendant made his plea of guilt, and did he in that

conversation hold out any indocement for him to

confess, and if so, what was that conversation

and what were those inducements." This ques-

tion was objected to and ruled out, on the ground

that "the question, as it regards any induce-

meats to confess should be confined to the officer

who had immediate authority over the defendant

at the time, and would exclude an officer who

had not had any connection or authority in the

prosecution;" exception to which ruling was

have charge of the defendant before the Police

Justice, said to the defendant, immediately be-

fore his confession, and also to the other prison

ers, that " if they were guilty they had better

admit it, if not, to say so ; but that if they would

come in and confess, the Judge would release

them from the prosecution and they would go

free of the charge." When the jury rendered

their verdict, defendant's counsel excepted there-

to as contrary to law and evidence, but alleged

no special grounds. A motion in arrest was

overruled, alleging special exceptions to the suf-

ficiency of the indictment, and exception was

The Attorney-General, S. H. Phillips, contra.

HARTWELL J: The questions in this case are

the sufficiency of the indictment, the admissibility

of the rejected evidence and the competency of

The indictment presents the statute ingredients

of the offence of perjary, and the exception to

The role of English and American law, unlike

that of civit law, excludes confessions which are

not voluntary, on the principle that no one shall

be made to convict himself, by torture or other-

wise. This rule excludes confessions wherever

the slightest inducements by persons in authority

had been held out, unless it be shown that their

influence was removed. The rule was extended

to cover inducements made in the presence of

persons in authority under their implied sanc-

tion, by the complainant or his wife, by a surgeon

or chaplain in attendance, and generally by per-

sons whom the accused might regard as having

authority.-Com. vs. Morey, I Gray, 263; Com.

vs. Tuckerman, 10 Gray, 190; Com. vs. Curtis,

97 Muss., 578; Rex vs. Upchurch, I Mood. Cr.

Cases, 464; Rex vs. Luckhurst, 22 E. L. & E.,

606. The admissibility of the rejected evidence in

this case seems to be within this extended rule,

and also within the rule laid down by this Court

n March, 1867, viz : "The Court will rigidly ex-

person who may be supposed to have some su-

thority or influence." The officer in Court, but

not in charge, may have been regarded by the

The admission of this evidence, and of evidence

of any facts or circumstances which may tend to

influence a confession, seems to me to be correct

in principle also. The private indocement may or

may not have as much effect as the official : but

it cannot be deemed immaterial in any case in

which it may effect the significance of the con-

ession. An assurance of advantage from an in-

timate friend of the judge may have no legal

effect, but no one can my that it may not deter-

mine the prisoner's course. The English Courts

have regretted that they are bound by their pre-

cedents to give any conclusive effect to official

inducements, and say thus: "Perhaps it would

have been better to have held that in all cases a

judge was to decide upon his own view of all the

circumstances, including the nature of the threat

or inducement, and the character of the pursons

holding it out."-Per Parke Baron, in Reg. va.

good in law.

prisoner as having some authority.

W. C. Jones, for the exceptions.

allowed to this ruling.

the admitted evidence.

its form is not sustained by law.

would release him from the prosecution, and he

fAn Indictment for Perjury is sufficient, which

A confession having been given in evidence, and

VOL. VII...NO. 37.1

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jury, and no request to exclude it on account of the subsequent evidence was made. The Court that tried this case knew material facts not before us, concerning the appearance, intelligence and maturity of the prisoner,-facts which have much to do with the probable influence of inducements. They did not see fit, unasked, to instruct

the jury to disregard the confession. This excep-

tion is therefore not sustainable. Verdict set uside, new trial ovelered.

Reminiscences of Abbotsford.

A friend, who had the privilege of seeing and talking with Sir Walter Scott at Abboteford, relates the following reminiscences in the August number of Old and New :

Scott had been, from my childhood my wonder and delight; and it was not without sensibility that I found myself in his presence. I had only time, however, to receive the impression that he was no more lame and stoot than I expected. when his cheery voice and cordial greeting took

possession of un, and we felt at ease and at home. The hall into which he led us, about forly feet long by about balf that breadth and height, was paved with black and white marble, lighted by two tall windows of stained glass. Wainscoted high up in oak, the cornice above, as also the frame work of oak that passed in shallow arches ncross the ceiling, were adorned with emblaroned shields of his own progenitors, and other border families. On one side of the huge fireplace of dark sandstone, opposite the entrance from the courtyard, opened a door into the drawing-room, and further along on the same side another into the great library. At the west end of the ball, between two niches, was a door to the stair-case, dining-room, boudeir, and small armory. Sir Walter led us along the hall, tramping as he went, with case and limping gait, toward the other end of it, where, between two figures in complete steel, one in chain, and the other in

plate-mail, we followed him into his sunctum. Throwing himself into a chair, of dimensions sufficiently capacious for his full, burly frame, after first providing his guests with seats as attractive if not as spacious, his large bound, which had followed him into the house, stretched himself at his fest. Scott removed the purple plaid cap from his head, and we saw in all its grandeur that remarkable face, which displayed the chameteristics familiar to us through portraits. His towering forehead was displayed in all its amplitude; while his expression, radiant with courtesy and kindness, brimmed over with good homor. One could not but be impressed with the wondrons vitality of the man, not only in intellectual vigor and kindness of heart, but in a magnetism

imparting its intensity to whoever approached. He read with attention our credentials, the letter of introduction from his friend Mr. Tickner. after whom he inquired with affectionate warmth, as also after many other American acquaintances. In reply to some inquiry after his own health, ha spoke favorably of its general condition, adding, however, that he began to feel the symptoms of the failure of a strong man. His age was far Further evidence for the defendant was, that a | short of the average limit of life, and he looked lung makai named Keawehano, appearing to as if he might have in store many years of en-His severe mental labor, that herenlean task that in six years paid off nearly a million of debt, had already made sad inroads on his constitution;

and, two years later, his life was brought to a promature close. For about an hour conversation flitted from topic to topic, when he told us that the dinnerhour was approaching, and that, after our drive, we might need repose and refreshment. He rang the bell, summoned an elderie servant to show us to our apartments, and we left him. As we passed out of the door, we saw him ascending the stairs to the gallery which connected with his own sleeping-room. Night or morning, he could pass at once, without delay, between couch

and deak. Some allusions to the beautiful creature which during the interview had kept an eye on his master, led to his mentioning that the animal slept on a rug by his bedside. When the sun was up, or at some other early hour at which it was his labit, when weather permitted, to go forth, the dog placed his paws heavily on his muster's breast, to intimate that the time had come,

and he must be up and away to the fields and He said he had long wished to visit America, but had been prevented. He told us that during the year 1812 he came near being taken there against his will. He was cruising around the ilebrides in a yacht, with the Light-House Commission, when une of our craisers chased them for several hours, and they would have been taken, but that they ran into shoul water, where

the cruiser could not follow. The conversation generally was brisk and animsted. Another incident gave it a turn. At a certain season in a Scotch dinner-certainly as his table small cups of raw whiskey were handed round, and drunk off by the experienced without difficulty. The sip I took, not knowing what it was, burnt my throat. The cups were of different forms and material, each having its story. The one given to my companion was made of a tree under which Wellington stood at the battle of Waterloo. Scott, having been for some time, busily engaged on his "Life of Napoleon," had much to say about him and his buttles. After the ladies withdrew, eigers were brought; and having acquired the accomplishment at Harvard, of which institution I was then a student, I was giad to think afterwards I had had my puff with the great woard.

At that sesson, so far north as Scotland, it was not sunset when we left the dining-room; and as we pessed into a long and narrow hall, extending through the house from front to rear, about sixteen feet in width, our ottention was directed by our hospitable host to swords and spears, daggers and pistols, and a vast number of other fighting implements that covered the walls. Each had attached to it some special association ; and though time was wanting for a thorough examination, where all was so deserving of study, the most remarkable were pointed out to us.

It is not what people out, but what they dignat that makes them strong. It is not what they read, but what they remember, that makes them learned. ties, that makes them righteune.

Moore, 12 R. L. & E. 596. The exception, on Mrs. Saner Hags, of Dutroit eclobrolod her quethe point of the rejected evidence is therefore australia birthday on Watenday evening. She can knit socks in four insprayer, and repeat the The confession was in stidence before the commendments with one hand behind her back.